

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1139

Introduced by Jensen, 20

Read first time January 20, 2004

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to nursing homes; to amend sections 71-162 and
2 71-6038 to 71-6042, Reissue Revised Statutes of Nebraska,
3 and section 81-3201, Revised Statutes Supplement, 2003;
4 to change provisions relating to nursing assistants; to
5 provide requirements for paid dining assistants; to
6 eliminate references to nurses' aides and orderlies; to
7 provide powers and duties; to harmonize provisions; to
8 repeal the original sections; to outright repeal sections
9 71-6014 and 71-6015, Reissue Revised Statutes of
10 Nebraska; and to declare an emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-162, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-162. (1) It is the intent of the Legislature that the
4 revenue to cover the cost of the credentialing system administered
5 by the department is to be derived from General Funds, cash funds,
6 federal funds, gifts, grants, or fees from individuals or entities
7 seeking credentials. The credentialing system includes the
8 totality of the credentialing infrastructure and the process of
9 issuance and renewal of credentials, examinations, inspections,
10 investigations, continuing competency, compliance assurance, and
11 the credentialing review process for the following individuals and
12 entities that provide health services and health-related services:

13 (a) Individuals in the practice of acupuncture; advanced
14 practice nursing; asbestos abatement, inspection, project design,
15 and training; athletic training; audiology; speech-language
16 pathology; chiropractic; dentistry; dental hygiene; environmental
17 health; hearing aid instrument dispensing and fitting; lead-based
18 paint abatement, inspection, project design, and training; medical
19 nutrition therapy; medical radiography; medication aide services;
20 medicine and surgery; mental health practice; nursing; ~~nurse aide~~
21 nursing assistant or paid dining assistant services; nursing home
22 administration; occupational therapy; optometry; osteopathic
23 medicine; pharmacy; physical therapy; podiatry; psychology; radon
24 detection, measurement, and mitigation; respiratory care; social
25 work; swimming pool operation; veterinary medicine and surgery;
26 water system operation; constructing or decommissioning water wells
27 and installing water well pumps and pumping equipment; and
28 wholesale drug distribution; and

1 (b) Individuals in the practice of and entities in the
2 business of cosmetology; electrology; emergency medical services;
3 esthetics; funeral directing and embalming; massage therapy; and
4 nail technology.

5 (2) The department shall determine the cost of the
6 credentialing system for such individuals and entities by
7 calculating the total of the base costs, the variable costs, and
8 any adjustments as provided in sections 71-162.01 to 71-162.03.

9 (3) When fees are to be established pursuant to section
10 71-162.04 for individuals or entities other than individuals in the
11 practice of constructing or decommissioning water wells and
12 installing water well pumps and pumping equipment, the department,
13 upon recommendation of the appropriate board if applicable, shall
14 base the fees on the cost of the credentialing system and shall
15 include usual and customary cost increases, a reasonable reserve,
16 and the cost of any new or additional credentialing activities.
17 For individuals in the practice of constructing or decommissioning
18 water wells and installing water well pumps and pumping equipment,
19 the Water Well Standards and Contractors' Licensing Board shall
20 establish the fees as otherwise provided in this subsection. All
21 such fees shall be collected as provided in section 71-163.

22 Sec. 2. Section 71-6038, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 71-6038. For purposes of sections 71-6038 to 71-6042,
25 ~~unless the context otherwise requires~~ and sections 7 to 12 of this
26 act:

27 (1) Complicated feeding problems include, but are not
28 limited to, difficulty swallowing, recurrent lung aspirations, and

1 tube or parenteral or intravenous feedings;

2 (2) Department ~~shall mean~~ means the Department of Health
3 and Human Services Regulation and Licensure; ~~and~~

4 ~~(2)~~ (3) Nursing assistant ~~shall mean~~ means any person,
5 ~~other than a licensed registered or practical nurse,~~ employed by a
6 nursing home for the purpose of aiding a licensed registered or
7 practical nurse through the performance of nonspecialized tasks
8 related to the personal care and comfort of residents but who is
9 not a paid dining assistant or licensed as a registered or
10 practical nurse;

11 (4) Nursing home means any facility or a distinct part of
12 any facility that provides care as defined in sections 71-420,
13 71-421, 71-422, 71-424, and 71-429; and

14 (5) Paid dining assistant means any person employed by a
15 nursing home for the purpose of aiding a licensed registered or
16 practical nurse through the performance of feeding residents but
17 who is not a nursing assistant or licensed as a registered or
18 practical nurse.

19 Sec. 3. Section 71-6039, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 71-6039. (1) No person shall act as a nursing assistant
22 in a nursing home unless such person:

23 ~~(1)~~ (a) Is at least sixteen years of age and has not been
24 convicted of a crime involving moral turpitude;

25 ~~(2)~~ (b) Is able to speak and understand the English
26 language or a language understood by a substantial portion of the
27 nursing home residents; and

28 ~~(3)~~ (c) Has successfully completed a basic course of

1 training approved by the department for nursing assistants within
2 one hundred twenty days of initial employment in the capacity of a
3 nursing assistant at any nursing home if employment begins after
4 January 1, 1984.

5 (2) The department may prescribe a curriculum for
6 training nursing assistants and may adopt and promulgate rules and
7 regulations for such courses of training. The content of the
8 courses of training and competency evaluation programs shall be
9 consistent with federal requirements unless exempted. The
10 department may approve courses of training if such courses of
11 training meet the requirements of this section. Such courses of
12 training shall include instruction on the responsibility of each
13 nursing assistant to report suspected abuse or neglect pursuant to
14 sections 28-372 and 28-711. Nursing homes may carry out approved
15 courses of training within the nursing home, except that nursing
16 homes may not conduct the competency evaluation part of the
17 program. The prescribed training shall be administered by a
18 licensed registered nurse.

19 ~~Prior to October 1, 1990, for nursing assistants at all~~
20 ~~nursing homes, and on and after such date for~~ (3) For nursing
21 assistants at intermediate care facilities for the mentally
22 retarded, such courses of training shall be no less than twenty
23 hours in duration and shall include at least fifteen hours of basic
24 personal care training and five hours of basic therapeutic and
25 emergency procedure training, and ~~on and after October 1, 1990, for~~
26 nursing assistants at all nursing homes other than intermediate
27 care facilities for the mentally retarded, such courses shall be no
28 less than seventy-five hours in duration.

1 (4) This section shall not prohibit any facility from
2 exceeding the minimum hourly or training requirements.

3 Sec. 4. Section 71-6040, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-6040. The ~~Department of Health and Human Services~~
6 ~~Regulation and Licensure~~ department shall approve all courses,
7 lectures, seminars, course materials, or other instructional
8 programs used to meet the requirements of sections 71-6038 to
9 71-6042 and sections 7 to 12 of this act.

10 Sec. 5. Section 71-6041, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 71-6041. To protect the health, safety, and welfare of
13 nursing home residents and the public, the ~~Department of Health and~~
14 ~~Human Services Regulation and Licensure~~ department shall adopt and
15 promulgate such rules and regulations as are necessary for the
16 effective administration of sections 71-6038 to 71-6042 and
17 sections 7 to 12 of this act. Such rules and regulations shall be
18 consistent with federal requirements developed by the United States
19 Department of Health and Human Services.

20 Sec. 6. Section 71-6042, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-6042. The department shall have the authority to
23 enforce sections 71-6038 to 71-6042 and sections 7 to 12 of this
24 act and ~~such~~ rules and regulations adopted ~~thereto~~ under section
25 71-6041 by any of the following means: ~~denial~~ Denial, suspension,
26 restriction, or revocation of a nursing home's license, refusal of
27 the renewal of a nursing home's license, restriction of a nursing
28 home's admissions, or any other enforcement provision granted to

1 the department.

2 Sec. 7. No person shall act as a paid dining assistant
3 in a nursing home unless such person:

4 (1) Is at least sixteen years of age;

5 (2) Is able to speak and understand the English language
6 or a language understood by the nursing home resident being fed by
7 that paid dining assistant;

8 (3) Has successfully completed a course of training
9 prescribed by the department for paid dining assistants;

10 (4) Has no adverse findings on the Nurse Aide Registry or
11 the Adult Protective Services Central Registry; and

12 (5) Has no adverse findings on the central register
13 created in section 28-718 if the nursing home which employs the
14 paid dining assistant has more than one resident under the age of
15 nineteen years as specified in section 12 of this act.

16 Sec. 8. A paid dining assistant is authorized only to:

17 (1) Feed residents who have no complicated feeding
18 problems;

19 (2) Work under the supervision of a licensed registered
20 or practical nurse who is in the nursing home and immediately
21 available; and

22 (3) Call a supervisor for help in an emergency.

23 Sec. 9. A nursing home shall base the selection of a
24 resident for feeding by a paid dining assistant at any meal upon
25 the resident's latest assessment and plan of care and the charge
26 nurse's determination that the resident's condition at that time
27 meets that plan of care.

28 Sec. 10. (1) The department may prescribe a curriculum

1 for training paid dining assistants and may adopt and promulgate
2 rules and regulations for such courses of training. Such courses
3 shall be no less than eight hours in duration. The department may
4 approve courses of training if such courses of training meet the
5 requirements of this section. Nursing homes may carry out approved
6 courses of training and competency evaluation programs within the
7 nursing home. The prescribed training shall be administered by a
8 licensed registered nurse.

9 (2) The content of the courses of training and competency
10 evaluation programs shall include:

- 11 (a) Feeding techniques;
12 (b) Assistance with feeding and hydration;
13 (c) Communication and interpersonal skills;
14 (d) Appropriate responses to resident behavior;
15 (e) Safety and emergency procedures, including the
16 abdominal thrust maneuver;
17 (f) Infection control;
18 (g) Resident rights;
19 (h) Recognizing changes in residents that are
20 inconsistent with their normal behavior and the importance of
21 reporting those changes to the supervisory nurse;
22 (i) Special needs; and
23 (j) Abuse and neglect, including the responsibility of
24 each paid dining assistant to report suspected abuse or neglect
25 pursuant to sections 28-372 and 28-711.

26 (3) This section shall not prohibit any facility from
27 exceeding the minimum hourly or training requirements.

28 Sec. 11. The department shall maintain a paid dining

1 assistant registry and shall include in the registry individuals
2 who have successfully completed a paid dining assistant course of
3 training and a competency evaluation program.

4 Sec. 12. Each nursing home shall maintain a record of
5 all individuals employed by the facility as paid dining assistants,
6 verification of successful completion of a training course for each
7 paid dining assistant, and verification of having made checks with
8 the Nurse Aide Registry and the Adult Protective Services Central
9 Registry. If a nursing home has as part of its census at any given
10 time more than one resident under the age of nineteen years, any
11 and all paid dining assistants or the paid dining assistant
12 assigned to any such resident shall have no adverse findings on the
13 central register created in section 28-718 and the nursing home
14 shall maintain in its record verification that each such paid
15 dining assistant has no adverse findings on such central register.

16 Sec. 13. Section 81-3201, Revised Statutes Supplement,
17 2003, is amended to read:

18 81-3201. (1) The Governor shall appoint a Director of
19 Regulation and Licensure for the Department of Health and Human
20 Services Regulation and Licensure who shall (a) have administrative
21 experience in an executive capacity and some special training in
22 public health work and (b) be either a graduate of a recognized
23 school of medicine and licensed to practice medicine and surgery in
24 the State of Nebraska or a person with a recognized and
25 demonstrated expertise in and knowledge of health and human
26 services delivery. The director shall report to the Governor and
27 serve full time at the pleasure of the Governor. The director
28 shall be subject to confirmation by a majority vote of the members

1 of the Legislature as provided in section 81-102.

2 (2) If the director appointed under subsection (1) of
3 this section is not a licensed physician, the Governor shall
4 appoint a chief medical officer to be responsible for oversight of
5 health issues for the Nebraska Health and Human Services System.
6 The chief medical officer shall report to the Governor and serve
7 full time at the pleasure of the Governor and shall be subject to
8 confirmation by a majority of the members of the Legislature. The
9 chief medical officer shall be a graduate of a recognized school of
10 medicine and licensed to practice medicine and surgery in the State
11 of Nebraska and have some special training in public health work.
12 If a chief medical officer is appointed, he or she shall perform
13 the duties under the Uniform Licensing Law specified in section
14 71-155.01 and shall be the final decisionmaker in contested cases
15 of (a) the health care facilities defined in the Health Care
16 Facility Licensure Act arising under the act and sections 71-6042
17 and 81-604.03 and (b) occupations ~~referenced in sections 71-6038~~
18 ~~and 71-6039~~ defined in subdivisions (3) and (5) of section 71-6038.

19 Sec. 14. Original sections 71-162 and 71-6038 to
20 71-6042, Reissue Revised Statutes of Nebraska, and section 81-3201,
21 Revised Statutes Supplement, 2003, are repealed.

22 Sec. 15. The following sections are outright repealed:
23 Sections 71-6014 and 71-6015, Reissue Revised Statutes of Nebraska.

24 Sec. 16. Since an emergency exists, this act takes
25 effect when passed and approved according to law.